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Issues Related to Grants Administered by Individual Federal Departments

Reference Number:	96-16-1-10.550
Federal Catalog Number:	10.550
Federal Program Title:	Food Distribution
Federal Award Period:	Fiscal Year 1995-96
Category of Finding:	Special Reporting Requirements
State Administering Department:	California Department of Education (CDE)

Criteria

In our review of the Food Distribution program, we found the following requirements for special reporting. The Code of Federal Regulations, Title 7, Section 250.16(a), requires the California Department of Education (CDE) to maintain accurate and complete records with respect to the receipt, distribution, use, and inventory of donated foods. Further, Section 250.16(b) requires the CDE to maintain pertinent records for at least three years.

Condition

The CDE was unable to provide records to support data it reported on the FNS-155 Inventory Management Register reports from its Pomona warehouse during fiscal year 1995-96. The purpose of the FNS-155 is to report the estimated amount of inventory in the State's warehouses that exceed a six-month supply and to describe how the CDE will dispose of the excess inventory. Additionally, the CDE was unable to provide supporting records for one of five FNS-155 reports we reviewed at its Sacramento warehouse.

Recommendation

The CDE should ensure that it maintains accurate and complete records supporting its FNS-155 Inventory Management Register reports for at least three years.

View of Department

The FNS-155 report, which is sent to the U.S. Department of Agriculture (USDA), is merely an estimate of the donated foods which might be in excess of six months' inventory at the warehouse. The report is not a critical management tool for the CDE or the USDA. The report is not related to the management and control of the warehouse inventory. The Bureau of State Audits found the warehouse inventory to be accurate and complete as required by the Code of Federal Regulations, Title 7, Section 250.16.

The FNS-155 report describes the CDE action plan for reducing an estimated excess and is currently prepared once a month for the USDA from calculator tapes and scratch notes. However, because the report does not contain significant operating information, the USDA is planning to change the reporting period to once every six months.

The CDE is developing a standard form and procedure to be used in both warehouses to calculate estimated excess donated foods for the FNS-155 report. The information gathered to calculate the estimates will be retained in CDE files with a copy of each FNS-155 report.

Reference Number:	96-18-1-10.558
Federal Catalog Number:	10.558
Federal Program Title:	Child and Adult Care Food Program
Federal Award Period:	Fiscal Year 1995-96
Category of Finding:	Monitoring
State Administering Department:	California Department of Education (CDE)

Criteria

In our review of the Child and Adult Care Food Program, we found the following requirement for monitoring of subrecipients. The Code of Federal Regulations, Title 7, Section 226.6(l), requires the California Department of Education (CDE) to review at least 33.3 percent of the participants in its Child and Adult Care Food Program each fiscal year.

Condition

Federal regulations require the department to review 33.3 percent of the participants in the Child and Adult Care Food Program each fiscal year to assess compliance with program provisions. During fiscal year 1995-96, the department completed reviews for only 224 of the 739 participants (30 percent) in its Child and Adult Care Food Program. Without adequate monitoring, the department cannot assure that participants in the program are performing services properly.

Recommendation

The department should ensure that it reviews at least 33.3 percent of the participants in its Child and Adult Care Food Program each year.

View of Department

In addition to requiring the annual review of 33.3 percent of all institutions, the Code of Federal Regulations, Title 7, Section 226.6(l), requires the CDE to ensure that independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes, with 1 to 200 homes, are reviewed at least once every four years. Even though the CDE slightly missed the 33.3 percent review requirement in 1995-96, the CDE met the requirement for reviewing centers and organizations at least once every four years.

The CDE was not able to review 33.3 percent of all institutions in 1995-96 because there were three staff vacancies in several large counties (San Bernardino, San Mateo, San Diego, Imperial, and Los Angeles) during the entire year. Those vacancies are now filled. A new staff member was hired for San Mateo County in April 1996 and two new staff were hired for San Bernardino, San Diego, Imperial, and Los Angeles counties in June 1996.

Under normal conditions, when there are staff vacancies for an extended period of time, the CDE's standard operating procedure is to have existing staff increase their workload and cover the assignments of the vacant positions. However, in 1995-96 existing staff became responsible for administering two new federal programs in addition to their existing workload and were unable to cover the assignments of the vacant positions. The CDE has prepared budget change proposals requesting additional staff to cover the two new federal programs.

All institutions which were not reviewed in 1995-96 have since been reviewed or are scheduled to be reviewed by June 30, 1997. In addition, all 1996-97 scheduled reviews will also be completed by June 30, 1997.

Reference Number:	96-15-1-14.239
Federal Catalog Number:	14.239
Federal Program Title:	Home Investment Partnerships Program
Federal Award Number and Period:	M 92-SG 060100; FFY 1992-93 M 93-SG 060100; FFY 1993-94 M 94-SG 060100; FFY 1994-95 M 95-SG 060100; FFY 1995-96
Category of Finding:	Earmarking
State Administering Department:	Department of Housing and Community Development (department)

Criteria

In our review of the Home Investment Partnerships Program (HOME), we determined the following compliance requirements relate to the administration of the program. The Code of Federal Regulations, Title 24, Section 92.207, requires that a participating jurisdiction may not spend more than 10 percent of HOME funds for administrative and planning costs. In addition, this section allows a participating jurisdiction to use for administrative and planning costs up to 10 percent of any return on HOME investments it receives. Further, the Code of Federal Regulations, Title 24, Section 85.20, requires that a state maintain fiscal control and accounting procedures adequate to assure that grant funds have not been used in violation of the prohibitions and restrictions of program requirements.

Condition

To ensure that it complies with HOME's spending restrictions for administrative and planning costs, the Department of Housing and Community Development (department) needs to continue improving its internal controls. In our 1994-95 audit report, we noted weaknesses in the department's controls over the spending of HOME funds for administrative costs. In response, the department stated that it had revised its procedures for using program income, and that it had established program cost accounts and index codes to identify project costs properly. However, our 1995-96 review indicated that the department has not yet fully implemented these corrective actions to strengthen controls over its spending of HOME funds or program income.

When we reviewed for fiscal year 1995-96 the administrative and planning costs that the department charged to the 1993 HOME grant, we found that the amounts recorded in its accounting records, totaling approximately $3.46 million, exceeded the spending limit by

approximately $580,000. To request HOME funds for administrative and program costs, the department uses the Cash and Management Information System (CMIS) of the federal Department of Housing and Urban Development (HUD). However, the amount of administrative costs reported in the CMIS differs from the amount recorded in the department's accounting records by approximately $580,000. The department could not explain the difference between the two amounts because it has not yet developed procedures to reconcile expenditure information from the CMIS with balances in the department's program and accounting records.

In addition, federal regulations allow the department to use up to 10 percent of program income for administrative costs. However, we found that the department used 100 percent of the program income it received during fiscal year 1995-96, totaling approximately $85,500, to pay administrative costs. The department established a policy of using 100 percent of program income to pay administrative costs during the fiscal year and then adjusting its grant records at year-end to ultimately apply 90 percent of the program income to program costs, as required by federal regulations. However, according to the manager of its Fiscal Services Section, the department's current procedures to adjust its records to allocate program income properly would cause a discrepancy between those records and similar information tracked in HUD's CMIS. As a result, the department did not make any adjustments to properly allocate program income to administrative and program costs at year-end.

We also found the department does not always properly record administrative costs in its accounting records and this reduces its ability to monitor the amount of HOME funds that it spends for administrative costs to ensure that the department complies with program requirements. We reviewed a sample of 12 payments and found that 4 of the payments, totaling $57,348, went toward administrative costs. However, the department recorded the payments as HOME program costs. These errors occurred because the department did not properly assign separate accounting codes to accumulate HOME program and administrative costs for some housing projects. After we reported a similar finding in our fiscal year 1994-95 audit, the department stated that it would review the funding codes for its projects and establish separate accounting codes for the administrative costs. However, according to the manager of the Fiscal Services Section, the department mistakenly did not include four projects in its review.

Recommendations

To strengthen controls over its use of HOME program funds for administrative and planning costs so that it complies with program spending restrictions and requirements, the department should do the following:

- Develop and implement procedures for reconciling expenditure information in its accounting and program records with expenditures reported in the CMIS. Such reconciliations will allow the department to monitor administrative costs and ensure those costs do not exceed allowable limits;

- Establish procedures to ensure that the department allocates program income to administrative and program costs as required by federal regulations; and

- Ensure that it codes administrative costs properly and spends funds for HOME program costs in accordance with program requirements.

View of Department

The department agrees with the recommendations and will implement the following corrective actions:

- The Federal Fiscal Section within the Community Affairs Division has developed procedures to reconcile program and accounting records of administrative costs. The Federal Fiscal Section has reconciled administrative costs recorded in the HOME subsidiary program records, the accounting records, and disbursement records maintained by HUD. The department will complete the adjustments to its records before June 30, 1997.

- During fiscal year 1996-97, the department will implement a new procedure to ensure that program income will be treated in accordance with federal regulations. Using a specific project cost account, the department will account for program income separately from the HOME grant and apply 90 percent of program income to HOME program costs.

- To address a recommendation from our fiscal year 1994-95 audit, the Fiscal Services Section reviewed the funding codes for its projects and established accounting codes for the administrative costs of subrecipients. However, the review mistakenly omitted the projects of four subrecipients. The department has identified all projects initiated during fiscal year 1995-96 with an accounting code for program costs and a separate accounting code for administrative costs.

Reference Number:	96-16-2-14.228, 14.239
Federal Catalog Number:	14.228 14.239
Federal Program Title:	Community Development Block Grant— State's Program Home Investment Partnerships Program
Federal Award Number and Period:	CDBG: B 93-DC 060001; FFY 1993-94 CDBG: B 94-DC 060001; FFY 1994-95 CDBG: B 95-DC 060001; FFY 1995-96 HOME: M 92-SG 060100; FFY 1992-93 HOME: M 93-SG 060100; FFY 1993-94 HOME: M 94-SG 060100; FFY 1994-95 HOME: M 95-SG 060100; FFY 1995-96
Category of Finding:	Special Reporting Requirements
State Administering Department:	Department of Housing and Community Development (department)

Criteria

In our review of the Community Development Block Grant program (CDBG) and the Home Investment Partnerships Program (HOME), we determined the following compliance requirements were necessary for annual program reports. The Code of Federal Regulations, Title 24, Section 91.520, requires the State to annually review and report on the progress it has made in carrying out its strategic plan and action plan for the HOME and CDBG programs. This performance report must describe available resources and how the state invests them, the geographic distribution and location of investments, and the racial and ethnic demographics of the persons and families served by the program. In addition, the section requires that the report include the amount and use for projects of the repayment of, and interest earned from, loans of HOME funds. Finally, the Department of Housing and Community Development's (department) CDBG Grant Manual requires that subgrantees submit annual performance reports to the department by August 15.

Condition

The department is responsible for preparing a comprehensive annual performance report on the implementation of its strategic and action plans for the CDBG and the HOME programs, and submitting the report to the federal Department of Housing and Urban Development (HUD). However, the department's system of internal administrative controls is not sufficient to assure that the reported statistical and fiscal information is complete and supported by accurate statistical data. In addition, the department did not comply with all of the reporting requirements. We reported a similar finding in our fiscal 1994-95 audit. In response, the department stated that it agreed with our finding.

We found that CDBG statistical and fiscal information contained in the annual report for fiscal year 1995-96 was incomplete. Because the department had not received timely performance reports from some subgrantees, it could not include their statistical and fiscal data in its performance report to HUD. We found that 95 of 366 subgrantees submitted their annual activity reports from 1 to 179 days late. Furthermore, as of March 14, 1997, 22 subgrantees had not submitted annual activity reports due on August 15, 1996. Timely reports are essential for the department to provide meaningful reports to the federal government and to ensure that subgrantees use funds appropriately and achieve the objectives of the CDBG program.

Similarly, we found that the HOME program information contained in the report covering fiscal year 1995-96 contained errors, was not always supported by accurate statistical data collected by the department, or was incomplete. For example, the department overstated HOME awards by $3.5 million, or 10 percent, because it had incorrectly included amounts awarded for the Real Estate Owned program. In addition, program reporting guidelines require the department to report the number of households it served during the fiscal year and characterize the income level and racial and ethnic composition of the households. However, because the department did not maintain this information, for fiscal year 1995-96 it reported summary statistical information extracted from HUD's Cash and Management Information System for the period June 2, 1995, through June 28, 1996. Moreover, because the department did not maintain information on income or racial and ethnic composition of the households it served, it divided the summary totals evenly to those categories. As a result, the department has used incorrect data and misreported the income and racial and ethnic characterization of these households during

fiscal year 1995-96. Finally, the department did not include in its comprehensive annual performance report the amount and use for projects of the repayment of, and interest earned from, loans of HOME fund (program income), as required by federal regulations.

Recommendation

The department should ensure that statistical data included in annual reports to HUD are supported by accurate detailed data collected by the department. In addition, the department should report relevant financial information to meet program requirements. Finally, the department should ensure that it receives timely activity reports from CDBG subgrantees so that it can include complete statistical and fiscal information in its annual performance report to HUD.

View of Department

The department agrees with our recommendation and provides the following comments. Effective fiscal year 1996-97, the department has employed a management services technician to maintain the database needed to accumulate and report the detailed statistical financial information required for the programs' annual reporting. For the fiscal year 1996-97 annual reports, the department will develop a conforming methodology to support the information provided in the annual report that allocates summary totals to the appropriate categories.

Reference Number:	96-17-1-14.228, 14.239
Federal Catalog Number:	14.228 14.239
Federal Program Title:	Community Development Block Grant— State's Program Home Investment Partnerships Program
Federal Award Number and Period:	CDBG: B 92-DC 060001; FFY 1992-93 CDBG: B 93-DC 060001, FFY 1993-94 HOME: M 92-SG 060100; FFY 1992-93 HOME: M 93-SG 060100; FFY 1993-94 HOME: M 94-SG 060100; FFY 1994-95 HOME: M 95-SG 060100; FFY 1995-96
Category of Finding:	Special Tests and Provisions
State Administering Department:	Department of Housing and Community Development (department)

Criteria

In our review of the Community Development Block Grant (CDBG) program and the Home Investment Partnerships Program (HOME), we determined the following compliance requirements relate to the awarding of grants to subrecipients. The Code of Federal Regulations, Title 24, Section 92.504(e), requires that the State must review no less than once a year the performance of each HOME contractor and subrecipient. The section further requires the State to conduct on-site reviews of HOME multi-family rental housing projects to determine compliance with housing codes and the requirements of the program.

The Code of Federal Regulations, Title 24, Section 85.40, requires the State to monitor activities supported by the CDBG subgrant to ensure compliance with the requirements of the CDBG program.

Condition

The Department of Housing and Community Development (department) needs to further improve its monitoring of HOME and CDBG subrecipients to ensure compliance with requirements of their respective programs. We reviewed the department's fiscal year 1995-96 monitoring activities for HOME subrecipients and found that the department has not fully developed and implemented a strategy to meet the program's monitoring requirement. In addition, we found that the department does not always comply with its own procedures for monitoring CDBG subgrantees.

We reported a similar finding in our fiscal year 1994-95 audit. In response, the department stated that it revised its monitoring procedures to include a one-time review of HOME projects completed during a contract period. The one-time review includes certifying eligibility and ensuring that subrecipients comply with other program requirements during the implementation of the program. The department also stated that it would implement procedures for on-site monitoring of HOME-funded multi-family rental housing by September 30, 1996. Further, the department stated that it would monitor HOME subrecipients by reviewing milestone schedules, progress on project set-ups and completions, funds expended, and compliance with periodic report requirements. Finally, the department stated that it had strengthened its CDBG monitoring practices by requiring managerial oversight of monitoring reports.

Although the department has made some improvements in reviewing the performance of HOME subrecipients, during our fiscal year 1995-96 audit we found that it has not developed and implemented adequate written procedures to ensure that it meets HOME's monitoring requirements. For example, the department's strategy for evaluating the performance of subrecipients does not include specific procedures to ensure that the department has met the annual monitoring requirements specified by federal regulations. Furthermore, the department does not have a tracking system to determine which subgrantees the department has reviewed nor does it maintain records documenting the extent of its monitoring activities. As a result, the department had not yet performed the monitoring review for 59 of the completed contracts eligible to receive one-time monitoring. Moreover, as of February 1997 the department could not provide the monitoring checklist for one of the nine contract reviews it conducted during fiscal year 1995-96. We also determined that the department has not developed or implemented

procedures for HOME's required on-site review of multi-family rental housing projects to determine compliance with housing codes and program requirements.

In addition to auditing the department's monitoring related to HOME projects, we reviewed the department's fiscal year 1995-96 monitoring of local governments that receive CDBG funds. We found that the department cannot be certain that CDBG subgrantees comply with program requirements because it does not always comply with its own procedures for notifying subgrantees about the results of the department's monitoring activities or ensure that it monitors all subgrantees. Specifically, the department's monitoring procedures require it to document its conclusions on subgrantee performance and to communicate those conclusions to the subgrantee within 45 days after the review. However, the department notified one subgrantee about the results of the department's review 349 days after the monitoring visit had ended. For a second subrecipient, as of February 21, 1997, the department had not documented conclusions about the subgrantee's performance or communicated the results of the review to the subgrantee even though the department had completed its monitoring visit 519 days earlier. Further, because of a prior-year change in the method the department uses to track CDBG subgrant awards, the department mistakenly did not perform program monitoring for one subgrantee.

Recommendation

The department should develop and implement the necessary procedures to ensure that it complies with HOME's monitoring requirements. In addition, the department should follow its review procedures for monitoring CDBG subgrantees.

View of Department

The department agrees with our recommendations and provides the following comments. The department is currently revising its monitoring strategy for HOME. The department plans to implement a revised monitoring strategy in fiscal year 1997-98 that will include procedures for on-site monitoring for HOME-funded multi-family rental housing. The department uses a tracking system to monitor the status of CDBG subgrants. However, during fiscal year 1995-96, the position assigned to maintain the tracking system was vacant. In fiscal year 1996-97, the department employed a management services technician to maintain the tracking system.

Reference Number:	96-11-1-14.228, 14.239
Federal Catalog Number:	14.228 14.239
Federal Program Title:	Community Development Block Grant— State's Program Home Investment Partnerships Program
Federal Award Number and Period:	CDBG: B 95-DC 060001; FFY 1995-96 HOME: M 95-SG 060100; FFY 1995-96

Category of Finding:	Administrative Requirements
State Administering Department:	Department of Housing and Community Development (department)

Criteria

In our review of the Community Development Block Grant (CDBG) program and the Home Investment Partnerships Program (HOME), we determined the following compliance requirements relate to the administration of the programs. The Code of Federal Regulations, Title 24, Section 85.20, requires the State to maintain accurate accounting records that permit preparation of reports, tracing of funds, and accurate, current, and complete disclosure of its financial activities relating to federal grants.

The State Administrative Manual, Section 7900, says that regular reconciliations of an agency's accounts and verifications of certain agency accounts with like accounts maintained in the State Controller's Office (SCO) may disclose some types of errors in the agency accounts or in the central accounts maintained by the SCO. The agency can then correct the accounts before preparing financial reports.

Condition

Although it has improved its procedures for reporting financial information for HOME and CDBG the Department of Housing and Community Development (department) still needs to improve some of its accounting methods to avoid errors and omissions. In our prior years' audits, we found that the department did not reconcile the receipts and disbursements of federal funds that it reported to the federal government with accounts maintained by the department and by the SCO. Although the department now reconciles to its own accounting records, grant receipts, and disbursements included in its federal financial reports, it does not agree the information in its accounting records to balances maintained by the SCO.

Specifically, the department shows differences between its accounting records and the account balances maintained by the SCO for receipts for CDGB administrative costs, HOME administrative costs, and HOME local assistance costs. These differences total approximately $1,900, $659,000, and $105,000, respectively. As a result, the department has lost some assurance that its accounting records are correct and complete.

Recommendation

The department should reconcile regularly the grant revenues and disbursements recorded in its accounting records to account balances maintained by the SCO.

View of Department

The department agrees with the recommendation. According to the chief deputy director, the department is now current on all grant reconciliations except those for CDBG and HOME. The department anticipates reconciling these accounts by June 30, 1997.

Reference Number:	96-11-2-14.228, 14.239
Federal Catalog Number:	14.228 14.239
Federal Program Title:	Community Development Block Grant— State's Program Home Investment Partnerships Program
Federal Award Number and Period:	CDBG: B 90-DC 060001; FFY 1990-91 CDBG: B 91-DC 060001; FFY 1991-92 CDBG: B 92-DC 060001; FFY 1992-93 CDBG: B 93-DC 060001; FFY 1993-94 HOME: M 92-SG 060100; FFY 1992-93 HOME: M 93-SG 060100; FFY 1993-94
Category of Finding:	Administrative Requirements
State Administering Department:	Department of Housing and Community Development (department)

Criteria

During our review of the Community Development Block Grant program (CDBG) and the Home Investment Partnerships Program (HOME), we determined the following was among the compliance requirements for program administration. The Code of Federal Regulations, Title 24, Section 85.20, requires the State to maintain accurate accounting records that permit preparation of reports and tracing of funds, as well as accurate, current, and complete disclosure of its financial activities relating to federal grants.

Condition

In our fiscal year 1993-94 audit, we reported that the Department of Housing and Community Development (department) had commingled approximately $258 million from nine federal housing assistance programs in its Federal Trust Fund (fund) since at least fiscal year 1989-90. According to the department, it used the fund as a "melting pot" of federal dollars wherein expenditures for grants lacking available cash were paid for with moneys from other grants. As a result, the department could not determine actual cash balances for specific federal grants. The department has not yet completed its work to identify adjustments resulting from commingling federal housing assistance program funds.

In response to our audit, the department hired an independent CPA firm to reconcile program records of federal and state housing grant receipts and disbursements with the department's official accounting records and create a balance statement for each program. According to the department's contract manager, the consultants planned to complete this task by June 30, 1996, and record any adjustments in the June 30, 1997 account balances.

The chief of the accounting office reported that the department has completed adjustments for three federal programs up to and including fiscal year 1993-94 and also for the CDBG program from 1983 to 1992. The department is presently completing its reconciliation of program and accounting records up to fiscal year 1996-97 and anticipates posting all of the necessary adjusting entries by December 31, 1997.

Recommendation

The department should continue to identify any adjustments to federal grant balances resulting from commingling federal grant funds.

View of Department

The department agrees with the recommendation. According to the chief of the accounting office, the department anticipates that posting of adjusting entries will be completed by December 31, 1997.

Reference Number:	96-11-3-14.228
Federal Catalog Number:	14.228
Federal Program Title:	Community Development Block Grant
Federal Award Number and Period:	B95-DC060001; FFY 1995-96
Category of Finding:	Administrative Requirements
State Administering Department:	Department of Housing and Community Development (department)

Criteria

In our review of the Community Development Block Grant (CDBG) program, we determined the following compliance requirements relate to a state department's awarding of grants to subrecipients. Title 31, Section 205.7, and Title 24, Section 85.21(b), of the Code of Federal Regulations, require the State to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement of funds by the State and its subrecipients for program

purposes. Title 24, Section 85.20(b), requires the State to monitor the cash drawdowns of its subrecipients to assure that they conform substantially to the same standards of amount and timing that apply to the State.

Condition

As in previous years, the Department of Housing and Community Development (department) lacks adequate monitoring of its CDBG subrecipients to ensure that they meet the federal cash management requirements. During fiscal year 1995-96, the department identified approximately $18.1 million that it had awarded to subrecipients for housing rehabilitation. The department allows CDBG subrecipients to draw federal funds in advance of expenses and to maintain cash balances in housing rehabilitation loan accounts so that the funds are available when contractor billings come due for housing rehabilitation projects. However, once the subrecipients deposit funds in these loan accounts, the department does not adequately monitor the reasonableness of the cash amounts or require the subrecipients to report the cash balances.

According to the CDBG program manager, the department does not review cash balances in these accounts until it performs on-site fiscal monitoring of subrecipients, a practice that usually occurs near the end of the two-year grant term. The CDBG program manager further stated that most subrecipients that draw CDBG funds in this manner take 7 to 90 days to spend the cash balances they maintain in their housing rehabilitation accounts. In response, the department stated it had revised its procedures for federal cash management requirement. We reported this issue in our fiscal year 1994-95 audit.

Recommendation

The department should follow federal regulations' cash management requirements for CDBG funds to ensure that the department minimizes the time between the draw and disbursement of federal funds.

View of Department

The department agrees with the recommendation and provides the following comments. The department has amended its cash request forms for fiscal year 1996-97 to require subrecipients to disclose cash balances in their local housing rehabilitation accounts. In addition, the department will require subrecipients to report any balances that remain in those accounts more than 22 working days. The department has identified a 22-working-day period as a reasonable time between the draw and disbursement of CDBG funds for program purposes.

Reference Number:	96-17-2-16.579
Federal Catalog Number:	16.579
Federal Program Title:	Drug Control and System Improvement—Formula Grant
Federal Award Number and Period:	94-DB-CX-0006 and FFY 1993-94 95-DB-CX-0006 and FFY 1994-95
Category of Finding:	Special Tests and Provisions
State Administering Department:	Office of Criminal Justice Planning (office)

Criteria

In our review of the Drug Control and System Improvement—Formula Grant, we determined that the following were among the compliance requirements related to the awarding of grants to subrecipients. The United States Code, Title 42, Section 3754(f), restricts funding for the same program to no more than four years (48 months in total). Multijurisdictional drug task forces are an exception to this rule.

A United States Department of Justice, Bureau of Justice Assistance (BJA) letter, dated March 25, 1991, provides guidance for implementing the four-year rule. The BJA allows a project to receive funding for more than 48 months if the project undergoes a "fundamental change in focus, scope or approach." The BJA states that merely adding "new components or activities to a program that do not materially and demonstrably change the form" does not meet their criteria. Such components as the goals, objectives, or purposes of the program must change substantially for an extension of funding.

Condition

The Office of Criminal Justice Planning (office) awarded approximately $1 million and $6.3 million of federal Drug Control and System Improvement—Formula Grant funds in fiscal years 1994-95 and 1995-96, respectively, to subrecipients who had already received these funds for the allowed maximum of four years (48 months). We selected 15 grants from awards for fiscal year 1995-96 for review. For each, we reviewed the applicants' grant proposals for the fiscal years 1990-91 through 1995-96. In 10 of the 15 grants reviewed, the office awarded funds for programs already funded for 48 months.

In making these awards, the office believed the BJA allowed continued funding if a change occurred in target population, program strategy, or target location. For example, the office considered a subrecipient's four-year program that originally focused on gang-related street drug sales as a new project when the focus changed to include mid-level drug offenders and additional locations. Thus, according to the office's interpretation, this change qualified the subrecipient for four additional years' funding. However, we do not consider a change of this nature in line with the BJA's definition of a "fundamental change"; therefore, we find these grants out of compliance.

The Bureau of State Audits reported the same finding for four subrecipients in fiscal year 1994-95; two of the ten grants reported this year were reported in fiscal year 1994-95, as well.

Recommendation

The office should seek approval for its interpretation of the four-year rule from the BJA. Until the BJA grants approval, the office should comply with the BJA's current guidelines in the March 1991 letter.

View of Department

The office does not dispute the audit finding and has requested written clarification from the BJA. According to its executive director, upon receipt of a response from the BJA, the office will implement the ruling. A corrective action plan will take steps to ensure compliance with the federal rules and regulations and will include procedures to advise subrecipients of the federally-approved requirements, review subrecipient files for noncompliance, and develop an internal management process to monitor compliance with the federal requirements.

U.S. Department of Labor

Reference Number:	96-14-1-17.225
Federal Catalog Number:	17.225
Federal Program Title:	Unemployment Insurance
Federal Award Number and Period:	T-06-210-50000; FFY 1995-96
Category of Finding:	Eligibility
State Administering Department:	Employment Development Department (department)

Criteria

In our review of the Unemployment Insurance program, we determined the following was among the compliance requirements related to the prompt payment of unemployment claims. The Code of Federal Regulations, Title 20, Section 640.5, requires the State to pay an average of at least 70 percent of all initial payments for interstate unemployment claims within 14 days following the end of the first compensable week of unemployment.

Condition

The Employment Development Department (department) is responsible for administering the Unemployment Insurance program. Federal regulations contain standards for promptness in processing claims for unemployment benefits. However, the department did not meet the standard that requires it to pay an average of 70 percent of first payments for interstate unemployment claims within the time required by federal regulations. We reviewed the department's reports of first payments for interstate unemployment claims for the period April 1995 through March 1996, and found that the department paid an average of 65.2 percent of the claims within 14 days following the end of the first eligible week of unemployment. According to the employment program manager, the department is unable to meet this desired level of performance for paying first-time interstate unemployment claims because claims received from other states are sometimes incomplete or inaccurate. According to its corrective action plan, the department expects to achieve the 70 percent quota first-payment requirement as a result of the new procedures it has implemented. Under its new procedures, out-of-state claimants can telephone the department directly, enabling department personnel to obtain all the information necessary to file a claim without delay.

Recommendation

To ensure that claimants of interstate unemployment benefits receive payments promptly, the department should continue its efforts to obtain interstate unemployment claim information in a timely and error-free manner.

View of Department

The department agrees with the audit finding. The department has moved to correct the problem of timely payments to interstate claimants by mainstreaming the process. Under the new process, out-of-state claimants may now call the department directly using a toll-free telephone number and provide the information the department needs to process and pay the claims.

Reference Number:	96-16-3-17.225
Federal Catalog Number:	17.225
Federal Program Title:	Unemployment Insurance
Federal Award Number and Period:	T-06-210-50000; FFY 1995-96
Category of Finding:	Special Reporting Requirements
State Administering Department:	Employment Development Department (department)

Criteria

In our review of the Unemployment Insurance program, we determined that the following was among the compliance requirements related to the payment of unemployment benefits to former federal employees and ex-service members. The U.S. Department of Labor's Employment Security Manual, Part V, Section 9336(D)(3), requires that the totals of the quarterly report of expenditures and adjustments of federal funds for unemployment compensation in Section A of the report equal the total charges in Section B of the report. This requirement applies to moneys paid to federal employees and ex-service members assigned to federal agencies.

Condition

The Employment Development Department (department) provides unemployment compensation benefits to former federal employees and ex-service members. The Federal Department of Labor reimburses the department for the benefits it pays. During fiscal year 1995-96, the department did not properly reconcile or explain two sections of the quarterly report it submits to the Department of Labor showing the expenditures of federal funds for unemployment compensation

paid to federal employees and ex-service members. Section A of the quarterly report summarizes information on expenditures, and Section B provides details supporting summarized amounts. Our review found that the two sections of the department's December 31, 1995 quarterly report differed by $83,305 in the section for benefits paid to former federal civilian employees. The department explained the amount as charges yet to be posted to their records. However, it could not provide details for $78,729 of the $83,305. In addition, the report's two sections also differed by $418,429 for benefits paid to ex-service members. The department attributed the difference to estimated amounts reported in Section B. Furthermore, we found the summary information of expenditures presented in Section A did not include $165,274 in benefits paid to former military employees.

In its March 31, 1996 quarterly report, the department added charges of $323,184 in Section B to adjust for the estimated charges from the December 1995 report. However, the department cannot explain remaining differences of $95,245 for benefits paid to ex-service members or $78,729 for benefits paid to former federal civilian employees. Further, the department cannot verify it has reported the $165,274 of benefits paid to former military employees that it omitted from the December 31, 1995 quarterly report. Failure to reconcile the two sections of the quarterly expenditure report may result in over or undercharges to certain federal agencies.

We have reported this issue in prior years. In response, the department stated that a time lag between the two automated systems used to prepare the report caused the majority of the differences. The department further stated that it was working to restructure the database for one system which will allow the department to reconcile the two systems. However, for fiscal year 1995-96, the department had not yet completed its efforts to restructure its database and reconcile the differences in the reports.

Recommendation

To ensure it correctly reports expenditures of federal funds for unemployment compensation paid to federal employees and ex-service members, the department should continue efforts to restructure its database so it can reconcile the two sections of the quarterly expenditure reports.

View of Department

The department agrees with our finding and has completed 9 of 11 data processing changes it has identified to correct the discrepancies in the reports. Other critical programming commitments have delayed completion of the two remaining changes, originally scheduled for completion in January 1997. While these changes remain a programming priority, the department is unable to determine the exact date it will complete the changes or adopt new personal computer software to reconcile the two sections of the reports.

Reference Number: 96-18-2-17.246 to 17.250

Federal Catalog Number: 17.246 to 17.250

Federal Program Title:	Job Training Partnership Act
Federal Award Number and Period:	A-5328-5-00-8150; FFY 1995-96
Category of Finding:	Monitoring
State Administering Department:	Employment Development Department (department)

Criteria

In our review of the Job Training Partnership program, we determined the following was among the compliance requirements related to the awarding of grants to subrecipients. The Code of Federal Regulations, Title 20, Section 627.445, requires the State to establish a system to regularly assess compliance with the cost limitations of the Job Training Partnership Act (JTPA). This system must include performing periodic reviews and taking corrective actions, as necessary.

Condition

The Employment Development Department (department) is responsible for administering the JTPA program. Federal regulations outline spending limits for activities funded under the program and for administrative costs of the department and local service providers. While the department has a system for identifying subrecipients who are not complying with the cost limitations of the program, it has not completed the resolution of long-outstanding cost-compliance issues related to subrecipients that receive the JTPA funds.

At the completion of our fiscal year 1994-95 audit, we reported that, as of March 1996, the department had not resolved 75 previously identified cost-compliance issues. Of the 75 issues, 48 had been outstanding for four years or more. To address the long-outstanding issues, the department dedicated one staff person within the Compliance Resolution Unit to resolve these issues.

As of April 1997, the department had reduced the number of unresolved cost-compliance issues to 15. However, of these remaining issues, 11 have been outstanding for more than three years. Without prompt resolution of cost-compliance issues, the department cannot ensure that subrecipients of the JTPA funds are spending those funds within the limits required by federal regulations. According to the manager of the Compliance Resolution Unit, the resolution of the remaining issues was delayed as a result of the transfer of the Compliance Resolution Unit from the Job Training Partnership Division to the Compliance Review Division, and because of concurrent demands on staff assigned to resolve the issues.

Recommendation

The department should continue its efforts to resolve long outstanding cost-compliance issues to ensure that subrecipients of the JTPA funds are spending those funds within the limits required by federal regulations.

View of Department

The department has taken steps to ensure it resolves the JTPA cost-compliance issues promptly. In December 1996, the department transferred the responsibility for resolving issues identified in audits, investigations, cost-compliance reviews, monitoring, and other means from the Job Training Partnership Division to the Compliance Review Division. The reorganization will enable the department to increase its oversight of the JTPA cost-compliance issues by applying the procedures and timelines relating to the resolution of audit findings. In addition, the Compliance Review Division has created a tracking system for the JTPA cost-compliance issues that identifies the date issues are received and establishes timelines for their initial and final determination. Further, the Compliance Resolution Unit manager and the Compliance Review Division chief review weekly status reports of unresolved cost-compliance issues.

For 2 of the 17 cost-compliance issues identified above, the department has reached its final determination. It is currently reviewing the remaining 15 issues and expects to issue a final determination for all remaining cost-compliance issues by June 30, 1997.

Reference Number:	96-12-1-20.205
Federal Catalog Number:	20.205
Federal Program Title:	Highway Planning and Construction
Federal Award Number and Period:	Various
Category of Finding:	Relocation Assistance and Real Property Acquisition
State Administering Department:	California Department of Transportation (department)

Criteria

In our review of the Highway Planning and Construction program, we determined that the following were among the compliance requirements related to Relocation Assistance and Real Property acquisition:

The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Office of Management and Budget Common Rule, Subpart C, Section 40(a), requires that grantees monitor grant and subgrant-supported activities to ensure compliance with applicable federal requirements and that performance goals are achieved. Grantee monitoring must cover each program, function, or activity. Further, the Code of Federal Regulations, Title 23, Section 740.4(e), requires the state highway agency to monitor relocation assistance activities conducted by any state agency, individual, firm, association, or corporation to the extent necessary.

Condition

In the course of planning for the construction of state highways, the California Department of Transportation (department) may need to acquire property and assist in the relocation of property owners and tenants displaced by the acquisition of the property. Federal regulations require the department to monitor these activities to ensure compliance with applicable federal requirements. For example, the department's acquisition compliance review includes a review of condemnation case management procedures and completion of the department's Management Review Acquisition Checklist. For relocation assistance, the department's draft management review plan for fiscal year 1995-96 includes sampling relocation impact documents in five district offices, as well as checking for eligibility and advisory assistance provided to residential owners and tenants in four other district offices. However, the department did not conduct acquisition and relocation assistance compliance reviews during fiscal year 1995-96.

In September 1995, the department sent district directors its Compliance Review Plans for Acquisition and Utilities for fiscal year 1995-96. The plan specified the items for review and included a schedule by quarter of the districts to be reviewed and a detailed review checklist. The objective of the reviews was to determine compliance with state and federal laws and regulations and the department's policies and procedures. Neither its headquarters nor its district offices conducted these reviews.

Also, in September 1995, the department prepared a draft management review plan for relocation assistance that detailed items to be reviewed at the district offices. However, the department did not perform these reviews, either.

Recommendation

The department should perform its compliance reviews to ensure that it effectively monitors its real property acquisition and relocation assistance procedures and complies with federal regulations that protect the rights of the parties involved.

View of Department

The program manager of the department's Right of Way Program concedes that the department did not perform acquisition compliance reviews during fiscal year 1995-96. This decision was based on several factors. Its previous reviews of the districts scheduled for review in fiscal year 1995-96 did not reveal any areas of concern that required immediate attention.

However, the department intends to perform acquisition compliance reviews in fiscal year 1996-97. In place of compliance reviews in fiscal year 1995-96, the department focused its efforts on identifying parcels not yet acquired on certified projects and assisting the districts in finalizing those acquisitions. Finally, the department is developing a more comprehensive district evaluation process to ensure compliance with applicable federal requirements.

In addition, the program manager concurs with our finding that the department did not perform relocation assistance compliance reviews in fiscal year 1995-96. The department anticipates that the district evaluation process being developed will also replace the current relocation assistance compliance reviews.

Federal Emergency Management Agency

Reference Number:	96-13-1-83.516
Federal Catalog Number:	83.516
Federal Program Title:	Disaster Assistance Program
Federal Award Number and Period:	N/A
Category of Finding:	Services Allowed
State Administering Department:	Office of Emergency Services (office)

Criteria

In our review of the Disaster Assistance Program, we determined that the following were among the compliance requirements related to project eligibility:

The Code of Federal Regulations (CFR), Title 44, sections 206.434(b)(1) and 206.435(a), require that hazard mitigation projects funded under the Hazard Mitigation Grant Program (HMGP) be consistent with the State Hazard Mitigation Plan for the type of disaster involved.

The CFR, Title 44, Section 206.435(a), stipulates that it is the State's responsibility to identify and select hazard mitigation projects, and Section 206.435(b)(3) requires the State to establish procedures and priorities for the selection of mitigation projects that best fit within the overall plan and that have the greatest potential impact on reducing future disaster losses.

The CFR, Title 44, sections 206.434 through 206.436, contain several provisions to ensure that the most worthy projects are selected and approved for funding under the HMGP. For example, the minimum-eligibility criteria include a requirement that the project be cost-effective and substantially reduce the risk of future damage. Additionally, the CFR requires that the application for each project include information addressing applicable environmental issues that were taken into consideration. Furthermore, the CFR requires that documentation be provided to substantiate that the project contributes to a long-term solution to the problem addressed and that the project has been determined to be the most practical, effective, and environmentally sound alternative after considering a range of options.

FEMA-1005-DR-CA (disaster 1005) is the agreement the Federal Emergency Management Agency (FEMA) and the State had concerning the Southern California fires that began on October 26, 1993. The agreement stipulates that the State agrees to be the grantee for all grant assistance provided under the federal Stafford Act and that it comply with the requirements of applicable regulations found in Title 44 of the CFR. The Stafford Act established provisions for federally funded disaster assistance programs.

Condition

The Office of Emergency Services (office) did not ensure that all projects funded under the HMGP met the basic project eligibility requirements. During our testing of five payments from the HMGP during fiscal year 1995-96, we found that the office reimbursed the Los Angeles County Fire Department (LACFD) $375,000 for project costs and $11,000 for administration fees related to a project that was not consistent with the State Plan in effect for disaster 1005. The funds were used by the LACFD to lease two Canadair SuperScooper water-dropping aircraft for a 66-day evaluation period that ended three days after the date that the LACFD applied for funding under the program. In addition to its nonconformity with the State Plan, the project was also inconsistent with other federal HMGP requirements.

The project application document indicated that no other alternative strategies were considered upon proposing the SuperScooper project. Additionally, there was no documentation submitted with the application to support the cost-effectiveness of the project. Finally, the application did not include sufficient information regarding the recent environmental concerns over the use of saltwater on forest fires and the saltwater's effect on soil.

To support the approval of the project, the office retroactively annexed a report to the State Plan that assessed the effectiveness of emergency management systems in responding to the related disaster. However, the report concluded that the office and the firefighting agencies need to recognize that air operations are shifting away from the use of fixed-wing aircraft.

In its federal grant award letter for the project, the FEMA stated that the project was approved as a pilot research study of a technology that may be useful for responding to wildfires but should not be construed as a precedent for the use of the HMGP for the purchase or lease of response equipment. FEMA eligibility policies indicate that the HMGP should not be used to fund preparedness and response-related activities. The project-evaluation report that was developed at the end of the lease period was inconclusive because the two leased aircraft were used for only 7of 71 brush fires that they were dispatched to during the period.

Because there are limitations to the total funding available under the HMGP for each disaster, some eligible projects are eliminated during the office's selection process and do not get approved for funding. The $375,000 in project costs for the SuperScooper lease represented 3.7 percent of the total HMGP funding available under disaster 1005. Office records indicate that there was approximately $5.5 million in potentially eligible projects that did not get funded under the HMGP for disaster 1005. Although some of these projects may have been ineligible, others were eligible but were eliminated because of funding constraints. Consequently, the decision to fund the SuperScooper project prevented other eligible projects from receiving funding under the program.

Recommendation

In meeting its responsibilities as the State's grantee for federal funding awards under the HMGP, the office should ensure that the projects it selects and recommends for funding meet basic federal eligibility requirements and are those projects that have the greatest potential

impact on reducing future disaster losses to the State. Additionally, the office should ensure that it recommends projects for funding that contribute to a long-term solution and reduce vulnerability to hazards within a project area rather than recommending projects related to disaster response activities.

View of Department

According to the program branch chief, and as indicated within the office's project-approval notification letter to the FEMA, the office director, FEMA director, and the FEMA regional director discussed the project and reached an agreement that the project was eligible under the HMGP.

Reference Number: 96-16-4-83.516

Federal Catalog Number: 83.516

Federal Program Title: Disaster Assistance Program

Federal Award Number and Period: N/A

Category of Finding: Special Reporting Requirements

State Administering Departments: Office of Emergency Services (office)

Criteria

In our review of the Disaster Assistance Program, we determined that the following was among the compliance requirements related to reporting. The Code of Federal Regulations Title 44, Section 206.438(c), requires the State to submit quarterly progress reports to FEMA indicating the status and completion dates for each project funded under the Hazard Mitigation Grant Program (HMGP). The HMGP is a federally authorized disaster assistance program that is implemented upon federal declaration of a disaster. The program provides funding to the State and to local governments for projects that mitigate the effects from future disasters on environments or structures.

Condition

During fiscal year 1995-96, the Office of Emergency Services (office) failed to prepare and submit 22 of the 36 quarterly reports to FEMA. Quarterly reports are used to monitor projects approved for funding under the HMGP for each disaster. The reports address the status of funded projects and identify changes in project costs, schedules, and scope of work.

Recommendation

The office should establish procedures to ensure that it prepares and submits quarterly reports for each disaster.

View of Department

The office agrees with the finding. According to the program manager, the office failed to submit the required quarterly progress reports during fiscal year 1995-96. Rather, the office simply passed along to FEMA copies of the individual subgrantee reports for some disasters. The office felt that it was acceptable to FEMA to submit the individual reports instead of a compiled report for each disaster. The office has now delegated the responsibility to specific staff to ensure that required quarterly reports are submitted to FEMA for each disaster on a timely basis.

Reference Number:	96-13-2-84.027
Federal Catalog Number:	84.027
Federal Program Title:	Grants to States for the Education of Children With Disabilities
Federal Award Number and Period:	H027A50115-96; FY 1995-96
Category of Finding:	Allowable Costs
State Administering Department:	California Department of Education (CDE)

Criteria

In our review of the grants to States for the Education of Children With Disabilities, we found the following requirements for allowable costs. The Code of Federal Regulations, Title 34, Section 300.321, requires the California Department of Education (CDE) to use federal program funds to provide free appropriate public education to children with disabilities. In addition, Section 300.620 states that the CDE can use administrative funds for administrative costs related to carrying out the federal program. Finally, the Office of Management and Budget, Circular A-87 (January 1981 version), Attachment B, Section D(5), states that costs resulting from violations of, or failure to comply with, federal, state, or local laws and regulations are unallowable. The Office of Management and Budget, Circular A-87 (May 1995 version), Attachment B, Section 20, states that fines, penalties, and other settlements resulting from violations of, or failure of the governmental unit to comply with, federal, state, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the federal award or written instructions by the awarding agency authorizing in advance such payments.

Condition

The department used funds from the "Grants to States for the Education of Children with Disabilities" federal grant to pay attorney fees of the parents or guardians of disabled children suing the State. Specifically, the department used federal program and administrative funds to pay plaintiff attorney fees of nearly $464,000 for the *Lacayo, et al. v. Honig, et al.* case, and $270,000 for the *Crawford, et al. v. Honig, et al*. case.

The plaintiff attorney fees are from cases where parents or guardians of disabled students sued local educational agencies (LEA) and the State to either stop an inappropriate practice or compel the LEA to perform an appropriate service. Because either case results from violations of, or failure of the governmental unit to comply with, federal, state, or local laws and regulations, the department's use of federal funds to pay these costs may be unallowable. Furthermore, federal

regulations require the State to use both federal program and administrative funds to provide free appropriate public education (FAPE) to the State's disabled students. Payment of plaintiff attorney fees may not be costs that relate to providing FAPE, but rather costs of violating or failing to comply with federal, state, or local laws and regulations.

In determining whether the costs were allowable, we contacted the United States Department of Education (USDE) to obtain its perspective on whether the costs are allowable. The USDE responded with an opinion letter it had provided to the state of Alabama regarding the State's ability to use federal funds for attorney fees resulting from a special education lawsuit. In a footnote to this opinion, the USDE made two points. First, it stated that payments of attorney fees resulting from a failure to comply with federal law would be considered unallowable costs. Second, the footnote explained that a state educational agency could not use federal funds to pay an award of attorney fees as a result of losing a parental appeal of a due process hearing. A due process hearing, as allowed by the United States Code, Title 20, Section 1415(b)(2), is an administrative function that provides for procedural safeguards for children with disabilities and their parents or guardians with respect to the provision of a free appropriate public education.

The CDE's general counsel contends that the USDE's Alabama opinion does not relate to the payments the CDE made in the *Crawford* and *Lacayo* cases because they were not due process hearings. While we agree that the CDE's cases are not due process hearings, the USDE did not limit its opinion to only due process hearings. Moreover, the opinion states that attorney fees paid as a result of losing a parental appeal of a due process decision are very analogous to a cost resulting from a failure to comply with federal law, and, therefore, under the Office of Management and Budget, Circular A-87, allowable costs provisions would not constitute an appropriate use of federal funds. Furthermore, our legal counsel stated that attorney fees awarded against the State as part of a successful action by the parents of disabled children suing the State are not allowable under the provisions of the Office of Management and Budget, Circular A-87, and 17 EHLR 1186 (USDE opinion in the Alabama matter).

The CDE's general counsel also contends that the CDE's use of federal funds for plaintiff attorney fees is allowable because federal law allows plaintiffs to recover attorney fees. While federal law allows a parent or guardian to recover attorney fees and related costs when they prevail in an action related to the provision of a free appropriate public education for their child, it does not provide authority for the State to use federal funds to pay these costs.

Because the department used federal funds to pay for plaintiff attorney fees, the State's LEAs may not have received all the federal funds they should have to provide free appropriate public education to disabled students.

Recommendation

The CDE should seek guidance from the USDE as to the allowability of using federal funds to pay for plaintiff attorney fees.

View of Department

This finding is about payment of attorney fees to prevailing parties in two federal district court cases involving special education matters. *[Lacayo et al. v. Honig, et al. (Lacayo)* and *Crawford, et al. v. Honig, et al.* (*Crawford).*] Both cases were atypical. We will provide a brief description of the cases and then we will set forth eight reasons why the Bureau of State Audits (BSA) finding is wrong.

The *Lacayo* case arose when plaintiffs brought a class action against a local educational agency (LEA) alleging that the LEA's behavioral interventions were inappropriate. The LEA settled with the plaintiffs and agreed to pay damages and attorney fees. The plaintiffs had also named the CDE as a defendant. In a separate settlement, the CDE agreed to issue state regulations clarifying appropriate strategies. The CDE did not agree to make any kind of monetary payment to the plaintiffs. Thus, we find no fines, penalties, or damages of any kind were paid by the CDE. As prevailing parties, the plaintiffs were entitled to payment of their costs, including attorney fees.

The *Crawford* case was instituted to reverse a court-ordered across-the-board ban on the use of standardized I.Q. tests to evaluate African-American children referred for special education assessment. The original injunction, issued in 1979, in the case of *Larry P. v. Riles* (EHLR 558:141), addressed I.Q. tests only in the context of the category of "educable mentally retarded" (EMR) students—a category that was later abolished. The 1986 court modification of this injunction was made without evidence or findings to support its extension beyond the context of the old EMR category. The Ninth Circuit Court reversed the lower court's expansion of the injunction. There was no fine, penalty, or punishment meted out by the court, merely a reversal of an earlier federal court order that was being carried out by the CDE. The plaintiffs prevailed—they got what they went to court for—so they were clearly entitled to costs as provided under U.S. Code, Title 20, Section 1415 (20 USC § 1415). The CDE's agreement for payment of these costs was approved by the court.

First, the BSA needs to recognize that neither *Lacayo* or *Crawford* arose after an administrative due process hearing conducted pursuant to the Individuals with Disabilities Education Act (IDEA). The CDE does not pay plaintiff (parents) attorney fees in such cases from federal grant funds (Education Code Section 56507).

Second, a federal district court has the power to levy on the state treasury if costs for attorney fees are not paid. In this situation the Budget Act requires the Department of Finance (DOF) to designate from what source of funds the levy is to be paid. Anticipating this, the CDE sought and received advance approval from the DOF to pay attorney fees in the *Lacayo* and *Crawford* cases from federal grant proceeds.

Third, the finding relies on the past and present Office of Management and Budget, Circular A-87 (A-87). It is important to note that the language of the present A-87, which took effect on September 1, 1995, is more expansive, adding to the language on fines and penalties, "damages and other settlements." Only *Crawford* occurred after the changes. Neither version of A-87 states that payment of plaintiff attorney fees in cases against a state education agency (in this situation the CDE) is unallowable. Both versions, in identical language, state that payment for only one type of legal expense—not the type for which payment was made in *Lacayo* and

Crawford—is unallowable. Both explicitly state: "Legal expenses for the prosecution of claims against the federal government are unallowable."

Fourth, in order to reach its finding, the BSA equated payment of an award of attorney fees with payment of a fine, penalty, damages, or settlement of a claim. We have found no authority that treats payment of an award of attorney fees in this manner. Even the comptroller general appears to have formally recognized a distinction. [See, e.g. 69 Comp. Gen. (1990) 469, 470 wherein the comptroller general frames the issue for decision by characterizing it as concerning "a claim for attorney fees incident to settlement of an employee's complaint of discrimination ..."] The Congressional Record relating to the enactment of the current 20 USC § 1415 says nothing that would even suggest that Congress considered the payment of attorney's fees to be the same or similar to the payment of a fine, a penalty, or damages.

Fifth, the BSA necessarily concluded that payment resulted from a violation or alleged violation of law specifically by the CDE. The BSA's conclusion is factually incorrect.

Sixth, the BSA relied on an August 10, 1990, letter from the Director of the Office of Special Education Programs to the Alabama Superintendent of Education published at 17 EHLR 1186. BSA is incorrect in denominating this a USDE decision. It is not. An official at the level of the author of this letter is not even considered a cognizant federal agency official. In addition, *Lacayo* and *Crawford* are factually distinguishable from the letter. The letter discusses payment of attorney fees awards after administrative due process hearings. Although we do not necessarily agree with the letter based on federal law alone, it is moot. As stated, the CDE and DOF, in accordance with state law, have not allowed payment for attorney fees awards from the federal grant in cases that arose after administrative due process hearings.

Seventh, IDEA was enacted under the Spending Power. In order to require the sovereign State of California to pay a fine, penalty, or damages, California would have to knowingly acquiesce to such. This, in turn, would require a specific abrogation of the Eleventh Amendment in the enabling legislation. 20 USC § 1415 does not contain an abrogation of sovereign immunity. If the BSA is correct in concluding that the payment of attorney fees is tantamount to payment of a fine, a penalty, or damages, then 20 USC § 1415 is unconstitutional and no state education agency would have to pay any attorney fees under this section.

Eighth and finally, the statement that the State's LEAs did not receive all the funds that they should have to provide free appropriate public education to pupils with exceptional needs is simply not accurate. The State's LEAs receive a specific amount of special education funding each year based on instructional personnel services; support services; pupils in nonpublic, nonsectarian schools and agencies; and instruction time (Education Code, Section 56711). In addition to revenue limit amounts, property taxes and other local general fund contributions for special education pupils and programs, federal special education funding is subtracted from the total LEA entitlement for special education to determine the LEA's state apportionment for special education (Education Code, Section 56712). All other factors held equal, if federal special education funding decreases, State apportionment for special education will increase and vice versa. The amount of special education funding is dependent on the types and amount of services provided as specified in Education Code, Section 56711, not the amount of federal and state funds available.

Rebuttals to CDE's Response

In the fourth paragraph of our condition section, we recognize that the CDE's cases are not due process hearings.

Although the DOF may have approved the use of federal grant proceeds to pay attorney fees, such approval does not necessarily establish such costs allowable to the federal program.

As stated in our criteria section, the earlier version of OMB Circular A-87 states that costs resulting from violations of, or failure to comply with, federal, state, and local laws and regulations are unallowable. According to our counsel, an award of attorney fees against the CDE in favor of a successful plaintiff in a disability rights case would be considered such a cost.

According to our counsel, the questioned costs could also be considered a penalty for the State's violation of the rights of the disabled individual. Therefore, the costs would be unallowable under either version of OMB Circular A-87. Also, the citation to the comptroller general reference is distinguishable because it relates to an employment discrimination case and does not address the language of A-87.

As stated in the second paragraph of our condition section, LEAs' actions gave rise to these cases. However, the department was included in the lawsuits and as a result used federal funds to pay plaintiff attorney fees. Further, the plaintiffs brought claims for violation of, or failure to comply with, applicable laws. The plaintiffs prevailed on these claims as evidenced by the payment of fees to the prevailing parties.

We modified the reference we make to the information we received from the USDE to characterize it as an opinion rather than a decision.

As stated in the fourth paragraph of our condition section, while we agree that the CDE's cases did not result from due process hearings, the USDE opinion letter was not limited to due process hearings.

The scope of our audit does not examine the constitutional basis for the CDE's payment of attorney fees in the *Lacayo* and *Crawford* cases or the constitutionality of 20 USC § 1415. It relates only to whether payments with moneys from the Grants to States for the Education of Children with Disabilities are allowable.

The text of the finding was revised to clarify that the State's LEAs did not receive all the federal funds they should have to provide free appropriate public education to disabled students.

Reference Number: 96-13-3-84.126

Federal Catalog Number: 84.126

Federal Program Title:	Rehabilitation Services— Vocational Rehabilitation Grants to States
Federal Award Number and Period:	H126A60005; FFY 1995-96
Category of Finding:	Services Allowed
State Administering Department:	Department of Rehabilitation (department)

Criteria

Various federal regulations dictate the manner in which the Department of Rehabilitation (department) must develop and oversee rehabilitation programs for clients under the federal Rehabilitation Services—Vocational Rehabilitation Grants to States program. In certain instances, the federal regulations provide general guidance, while the California Code of Regulations provides the specific guidelines for implementation. The following are some of the federal and state regulations that govern the department's development and oversight of rehabilitation programs:

- The Code of Federal Regulations, Title 34, Section 361.41 (a) (6), requires each individualized written rehabilitation program (IWRP) to include a procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives, as well as a record of these reviews and evaluations. The California Code of Regulations, Title 9, Section 7132 (d), defines "periodic" by requiring the counselor to evaluate the clients' progress at least every 90 days or to record the reason an evaluation was not completed.

- The Code of Federal Regulations, Title 34, Section 361.40 (c), requires the State to review the IWRP at least on an annual basis.

- The Code of Federal Regulations, Title 34, Section 361.34 (b), states that a client may receive an extended evaluation to determine vocational rehabilitation potential for a total period not longer than 18 months.

- The Code of Federal Regulations, Title 34, Section 361.40 (b), requires that the IWRP be initiated after certification of eligibility or certification for extended evaluation to determine rehabilitation potential. The California Code of Regulations, Title 9, Section 7132 (a), defines the initiation period of the IWRP by requiring that the IWRP be developed and implemented within 90 days of the intake interview unless the rehabilitation supervisor has authorized a continuation.

- The Code of Federal Regulations, Title 34, Section 361.30, requires the State to establish and maintain written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services. The California Code of Regulations, Title 9, Section 7041 (b), defines "expeditious" by requiring that applications be processed within 60 days of receipt. In that period of time, the counselor must certify whether the applicant is eligible for vocational rehabilitation services or approved for an extended evaluation.

Condition

We reviewed 30 client files to assess the department's efforts in developing and overseeing rehabilitation programs as required. For 14 files that were started during fiscal year 1995-96, we assessed department activities that would be performed when a client entered the program as well as assessed ongoing activities. For the remaining 16 files that were started before fiscal year 1995-96, we reviewed only ongoing activities.

Our review of the 30 files noted various instances where the department had not documented that it had monitored the progress of clients' rehabilitation programs in accordance with federal and state regulations. Additionally, in one instance, the department did not develop a rehabilitation program as required by regulations. When the department does not ensure that it follows regulations, it has reduced assurance that it is serving clients in the manner intended.

During our review of the 30 client files, we noted the following deficiencies in the department's efforts in overseeing rehabilitation programs:

- For 8 of the 30 client files, the department did not complete an evaluation of the client's progress within the required 90 days or record an explanation of the delay. For example, for 6 of the 8 client files, the counselor did not evaluate the client's progress for a period ranging from 6 to 18 months. Also, for 2 of the 6 client files, the department did not annually review the clients' IWRPs. The department stated that it lost contact with three of the six clients, which precluded its ability to evaluate client progress and, in the two instances, perform annual reviews. However, we found no documentation of attempts to contact the clients during the periods in question.

- For 1 of the 30 client files, the client remained in extended evaluation for nearly 6 months past the maximum allowable period of 18 months.

- For 1 of the 14 client files that were started during fiscal year 1995-96, we found that the department did not complete the IWRP within 90 days after being approved to receive services nor was a continuation authorized by the rehabilitation supervisor. Specifically, the client was eligible to receive services in April 1996. As of March 1997, 11 months later, the client's IWRP had not yet been completed. Further, the department took 78 days to determine this client's eligibility, exceeding the 60 day limit.

Recommendation

The department should ensure that it develops and oversees rehabilitation programs for clients as required by federal and state regulations. In addition, it should appropriately document all the activities for clients that it performs.

View of Department

The department agreed with the finding and stated the primary issue of client progress evaluations not performed within at least 90 days was either a loss of contact with the client or a

lack of documentation when a client received services. In addition, the department stated the lack of annual reviews of IWRPs was also due to a loss of contact with the clients. The department plans to remind staff of the need to contact clients regularly and document those contacts. Regarding the one client for which an IWRP was not established within 90 days, the department stated that this was an exception due to counselor absences and subsequent transfer of the case. The department agreed that this same client's eligibility was not determined within 60 days of his application and responded that the case should have had an approved extension of determination of eligibility. Further, for the client who remained in extended evaluation for nearly two years, the department stated that it would remind staff that extended evaluations cannot exceed an 18-month period.

Reference Number:	96-13-4-84.162
Federal Catalog Number:	84.162
Federal Program Title:	Emergency Immigrant Education
Federal Award Number and Period:	T162A50033; FY 1995-96
Category of Finding:	Allowable Costs
State Administering Department:	California Department of Education (CDE)

Criteria

In our review of the Emergency Immigrant Education grant, we found the following requirements for allowable costs. The United States Code, Title 20, Section 7544, provides that each state participating in the Emergency Immigrant Education program will receive an allocation equal to the proportion of such state's immigrant children and youth enrolled in schools relative to the total number of these enrolled in all the states participating in the program. Further, Section 7545 (a)(4) of the code requires the California Department of Education (CDE) to distribute program funds to local educational agencies (LEAs) based upon the number of immigrant children and youth enrolled in each LEA.

Condition

During fiscal year 1995-96, the State received an allocation of $16,861,453 based on the total number of immigrant children and youth enrolled in schools as reported by the CDE. After reserving $252,922 for administrative costs as allowed by the code, the CDE had $16,608,531 available for distribution to the LEAs. However, because some of the LEAs subsequently revised their pupil counts, the CDE distributed a total of only $16,459,664. As a result, the CDE had excess funds totaling $148,867. Moreover, rather than increase the amounts it allocated to each of the LEAs throughout the State, the CDE used a portion of the funds to support supplemental

programs at only a few of the agencies. Specifically, the CDE used $72,958 to fund supplemental programs at five LEAs and did not spend the remaining $75,909. Similarly, in fiscal years 1993-94 and 1994-95, the CDE had approximately $88,500 in excess funds that it spent on supplemental programs at certain LEAs.

Because the CDE did not allocate the excess program funds based on the proportion of immigrant children and youth enrolled in the local educational agencies throughout the State, some LEAs did not receive the entire amount of funds for which they were eligible.

Recommendation

The CDE should ensure that it properly allocates all program funds to the LEAs.

View of Department

In April 1990, the CDE received authorization from the U.S. Department of Education (USDE) to use unallocated Emergency Immigrant Education funds for technical assistance and staff development for the benefit of California school districts. The CDE believed the USDE authorization to be a policy statement approving California's use of unallocated funds for projects supporting the education of immigrant children. The CDE's Final Fiscal Expenditure Reports submitted to the USDE clearly describe the use of remaining Emergency Immigrant Education funds for conferences to provide technical assistance to all school districts in California and at no time did the USDE indicate that the CDE's practice of using unallocated funds for technical assistance was inappropriate.

However, on April 3, 1997, the CDE received clear direction from the USDE that only 1.5 percent of its Emergency Immigrant Education grant may be used for administrative costs, including technical assistance, and that the remaining 98.5 percent of the grant funds must be distributed to local educational agencies in accordance with the number of eligible immigrant children and youth in the State either on a formula or competitive basis. The CDE will allocate at least 98.5 percent of its 1997-98 grant to LEAs based on the number of eligible immigrant children.

Reference Number:	96-13-5-84.186
Federal Catalog Number:	84.186
Federal Program Title:	Safe and Drug-Free Schools and Communities—State Grants
Federal Award Number and Period:	S186A40062; 7/14/94 - 9/30/95
Category of Finding:	Allowable Costs—Exceeding Limit on Administrative Costs
State Administering Department:	Department of Alcohol and Drug Programs (department)

Criteria

In our review of the Safe and Drug Free Schools and Communities—State Grants, we determined that the following was among the compliance requirements related to administrative costs. The United States Code, Title 20, Section 3191(a)(2), requires that the department not expend more than 2.5 percent of the grant award for administrative costs.

Condition

Although the U.S. Department of Education has imposed a 2.5 percent limit on the amount of the grant that can be spent for administrative expenses, it has not defined which expenses should be classified as such. Thus, we cannot precisely determine the amount that the Department of Alcohol and Drug program's (department) administrative expenses have exceeded this limit. Depending on how administrative expenses are defined, we can only state that departmental administrative expenses may have exceeded the 2.5 percent limit by between $6,561 to $1,763,166.

The department spent approximately $2,028,015 in federal funds to support the Safe and Drug-Free Schools and Communities (SDFSC) grant. Support costs included personal services, distributed administration, and allocated and other expenses. Following is a summary of these expenditures:

Type of Expenditures	Total Expenditures	Percent of Total Expenditures
Support:		
Personal services	$ 1,065,440	10.0%
Distributed administration	406,945	3.8
Allocated expenses	273,635	2.6
Other expenses	281,995	2.6
Total Support	2,028,015	19.0
Local Assistance	8,648,164	81.0
Total	**$ 10,676,179**	**100.0%**

Personal Services consist of employee salaries and benefits. Distributed administration expenses include leadership and support services, such as the legal, audit, accounting, human resources, budget, and legislative affairs offices. Allocated expenses are allocated to the grant and include office supplies, equipment rental, postage, and office leasing. Other expenses comprise costs charged directly to the grant, such as travel, consultant contracts, supplies, and postage.

The department defines administrative expenses as activities related to compliance with state or federal law, including fiscal and federally mandated reports, contract negotiations over federal and state regulations and data collection, and site visits to monitor regulatory compliance. The

department excludes any program operations, such as designing and distributing program materials, developing requests for proposals, executing site visits to check activities or give technical assistance, reviewing project results and monthly progress reports, and preparing all necessary communications.

Based on a time study employing its definitions of administrative expenses, the department determined that 13.55 percent of all support costs, except consultant contracts, should be classified as administrative expenses. Using this calculation, the department classifies approximately $271,410 as administrative expenses. Since 2.5 percent of the grant award is $264,849, the department's administrative expenses exceeded this limit by $6,561. Alternatively, if all $2,028,015 in support costs were considered administrative expenses, the department would have exceeded the limit by $1,763,166.

Recommendation

The department should request that the U.S. Department of Education provide suitable definitions of administrative expenses so the department can ensure that its expenses do not exceed the grant limits.

View of Department

The department disagrees with the finding. According to the department's deputy director, the department believes it is complying with the 2.5 percent limit on administrative expenses. In addition, the department will continue to pursue a clear definition of administrative expenses from the U.S. Department of Education.

Reference Number:	96-14-2-84.032
Federal Catalog Number:	84.032
Federal Program Title:	Federal Family Education Loans
Federal Award Number and Period:	FFY 1995-96
Category of Finding:	Eligibility
State Administering Department:	California Student Aid Commission (commission)

Criteria

In our review of the Federal Family Education Loans program, we determined that the following were among the compliance requirements related to limits on student loans:

The Code of Federal Regulations, Title 34, Section 682.400, states that in order for the California Student Aid Commission (commission) to participate in the Federal Family Education Loans program, it must enter into various agreements with the federal government. As part of these agreements, the commission must ensure that its loan program meets the requirements that the total amount of student loans made to each borrower not exceed specified limits.

The United States Code, Title 20, Section 1078(b)(1)(B), provides for certain aggregate loan limits for guaranteeing subsidized loans. Subsidized loans are loans for which the federal government pays a portion of the interest charges on behalf of the qualifying students. These limits are based on the student's grade level and the amount of the student's total outstanding loans for the loan program.

Condition

As we reported in previous years, we found that the commission is not fully complying with the terms of its agreement to participate in the Federal Family Education Loans program. Specifically, federal law allows graduate and undergraduate students to have up to $65,500 and $23,000, respectively, in total subsidized student loans that are outstanding. However, in fiscal year 1995-96, the commission guaranteed an undergraduate subsidized student loan that exceeded the $23,000 maximum loan limit by $1,813. This loan exceeded the limit because, although the commission's automated system has data processing edits to prevent loans from exceeding the allowable maximum loan limits, these edits are not applied in all cases.

Specifically, the commission's automated system does not apply the maximum loan limit edits when processing a loan that consolidates a borrower's loans into one loan. For example, in one case, a lender reported the status of previously guaranteed loans as "paid-in-full." Subsequently, the lender submitted a consolidated loan for guarantee processing by the commission through its automated system. Between the two-year period that the status of the prior loans was changed to paid-in-full and the commission's guarantee of the consolidated loan, the commission guaranteed an additional student loan for the borrower.

However, when the lender subsequently submitted its consolidated loan for processing through the commission's system, the additional loan and the consolidated loan amounts together exceeded the maximum limit for subsidized loans.

The commission's automated system did not detect and report an over-limit exception because the system does not apply the maximum loan limit edits when processing loans that consolidate previously guaranteed loans. The commission became aware of the exception when a school reviewing this particular student's borrowing history identified the exception. The commission subsequently corrected the exception by reclassifying the amount over the maximum limit for the subsidized loan category to an unsubsidized loan category.

Although the commission issued an operations memorandum in February 1997 advising lenders to submit consolidation loans more promptly, the commission's current automated system does not have an effective process to prevent similar situations from occurring. The commission plans to make system modifications to ensure loans that are being consolidated are included in the calculation of a borrower's maximum loan limits. Additionally, the commission plans to develop and use "exception reports" to query the commission's system to identify and investigate other

loans that may have exceeded the maximum loan limits. However, until the commission does this, it cannot determine the full extent and incidence of loans exceeding the maximum limits.

Noncompliance with federal loan limits could result in a loss to the commission's guaranteed loan reserve fund if the borrower defaults. This is because in a default situation, the commission will pay the lender for the defaulted loan; in turn, the federal government will reimburse the commission the amount the commission paid the lender. However, the federal government may not reimburse the commission for the portion of the loan that exceeded the amount authorized by regulations.

Recommendation

The commission should modify its system to prevent loans from exceeding the maximum loan limits. Further, the commission should establish a procedure to periodically query its system to identify and correct any loans that exceed the maximum loan limit amounts.

View of Department

The commission agreed with the finding reported above and plans to improve its system to prevent and detect other consolidation loans that could have exceeded the maximum loan limits. The commission believes that exceptions similar to the one reported would be very limited because of the unusual combination of circumstances that would have to converge to result in guarantees in excess of the maximum limits.

Reference Number:	96-14-3-84.032
Federal Catalog Number:	84.032
Federal Program Title:	Federal Family Education Loans
Federal Award Number and Period:	FFY 1995-96
Category of Finding:	Eligibility
State Administering Department:	California Student Aid Commission (commission)

Criteria

In our review of the Federal Family Education Loans program, we determined that the following were among the compliance requirements related to limits on student loans:

The Code of Federal Regulations, Title 34, Section 682.400, states that in order for the California Student Aid Commission (commission) to participate in the Federal Family Education Loans

program, it must enter into various agreements with the federal government. As part of these agreements, the commission must ensure that its loan program meets the requirements that the total amount of student loans made to each borrower not exceed specified limits.

The United States Code, Title 20, Section 1078(b)(1)(B), provides for certain aggregate loan limits for guaranteeing subsidized loans. Subsidized loans are loans for which the federal government pays a portion of the interest charges on behalf of the qualifying students. These limits are based on the student's grade level and the amount of the student's total outstanding loans for the loan program.

Condition

As we reported in previous years, we found that the commission is not fully complying with the terms of its agreement to participate in the Federal Family Education Loans program. Specifically, federal law allows graduate and undergraduate students to have up to $65,500 and $23,000, respectively, in total subsidized student loans that are outstanding. However, in fiscal year 1995-96, the commission guaranteed an undergraduate subsidized student loan that exceeded the $23,000 maximum loan limit by $1,813. This loan exceeded the limit because, although the commission's automated system has data processing edits to prevent loans from exceeding the allowable maximum loan limits, these edits are not applied in all cases.

Specifically, the commission's automated system does not apply the maximum loan limit edits when processing a loan that consolidates a borrower's loans into one loan. For example, in one case, a lender reported the status of previously guaranteed loans as "paid-in-full." Subsequently, the lender submitted a consolidated loan for guarantee processing by the commission through its automated system. Between the two-year period that the status of the prior loans was changed to paid-in-full and the commission's guarantee of the consolidated loan, the commission guaranteed an additional student loan for the borrower.
However, when the lender subsequently submitted its consolidated loan for processing through the commission's system, the additional loan and the consolidated loan amounts together exceeded the maximum limit for subsidized loans.

The commission's automated system did not detect and report an over-limit exception because the system does not apply the maximum loan limit edits when processing loans that consolidate previously guaranteed loans. The commission became aware of the exception when a school reviewing this particular student's borrowing history identified the exception. The commission subsequently corrected the exception by reclassifying the amount over the maximum limit for the subsidized loan category to an unsubsidized loan category.

Although the commission issued an operations memorandum in February 1997 advising lenders to submit consolidation loans more promptly, the commission's current automated system does not have an effective process to prevent similar situations from occurring. The commission plans to make system modifications to ensure loans that are being consolidated are included in the calculation of a borrower's maximum loan limits. Additionally, the commission plans to develop and use "exception reports" to query the commission's system to identify and investigate other loans that may have exceeded the maximum loan limits. However, until the commission does this, it cannot determine the full extent and incidence of loans exceeding the maximum limits.

Noncompliance with federal loan limits could result in a loss to the commission's guaranteed loan reserve fund if the borrower defaults. This is because in a default situation, the commission will pay the lender for the defaulted loan; in turn, the federal government will reimburse the commission the amount the commission paid the lender. However, the federal government may not reimburse the commission for the portion of the loan that exceeded the amount authorized by regulations.

Recommendation

The commission should modify its system to prevent loans from exceeding the maximum loan limits. Further, the commission should establish a procedure to periodically query its system to identify and correct any loans that exceed the maximum loan limit amounts.

View of Department

The commission agreed with the finding reported above and plans to improve its system to prevent and detect other consolidation loans that could have exceeded the maximum loan limits. The commission believes that exceptions similar to the one reported would be very limited because of the unusual combination of circumstances that would have to converge to result in guarantees in excess of the maximum limits.

Reference Number:	96-17-3-84.032
Federal Catalog Number:	84.032
Federal Program Title:	Federal Family Education Loans
Federal Award Number and Period:	FFY 1995-96
Category of Finding:	Special Tests and Provisions
State Administering Department:	California Student Aid Commission (commission)

Criteria

In our review of the Federal Family Education Loans program, we determined that the following were among the compliance requirements related to preclaims assistance and supplemental preclaims assistance activities performed on delinquent loans:

The Code of Federal Regulations, Title 34, Section 682.404(a), requires the California Student Aid Commission (commission), upon receipt of a request from the lender, to begin "preclaims assistance" activities on a delinquent loan prior to the loan entering default status. Preclaims assistance means collection assistance the commission provides to the lender designed to

encourage the borrower to begin or resume repayment of the delinquent loan. These collection efforts include making, or attempting to make, contact with the borrower by mail or telephone. The commission must initiate at least three collection efforts, including at least one letter to the borrower.

When the loan is at least 120 days delinquent and when the lender makes a request to the commission, the commission is to exercise "supplemental preclaims assistance" activities on the delinquent loan prior to the lender filing a claim with the commission. Supplemental preclaims assistance involves initiating at least two more collection efforts designed to encourage the borrower to begin or resume repayment. In accordance with the United States Code, Title 20, Section 1078(l)(2), the federal government pays the commission 1 percent of the total unpaid principal and accrued interest for each loan on which supplemental preclaims assistance was performed and which the lender did not submit as a defaulted-loan claim on or before 270 days of delinquency.

Condition

We found that the commission did not always ensure compliance with the preclaims assistance requirements. Specifically, for the ten loans we reviewed, the commission's system indicated it had sent letters to borrowers. However, the system did not indicate the date the letters were sent. As a result, we could not always relate the letters to the specific loans and lender requests for preclaims assistance. Further, we could not always conclude that the letters demonstrated that the commission sent at least one letter to encourage the borrower to begin or resume repayment for each lender's preclaims assistance request. After our inquiries, the commission subsequently modified its system in April 1997 to include the date it sent the letters to make it possible in the future to relate the letters to specific loans and lender preclaims assistance requests.

We also found that, for three of the ten loans, the commission did not demonstrate that it performed the three required preclaims assistance activities. In each instance, not including the above mentioned letters, the commission performed only one telephone contact in its collection attempts. In all three instances, the commission made a successful telephone contact with the borrower or a representative in the borrower's household and discontinued additional collection attempts. The commission's practice was to consider a successful telephone contact with the borrower or a household representative as a completed effort; it considered additional attempts unnecessary. However, failure to provide the required preclaims assistance activities could jeopardize the commission's reinsurance agreement with the federal government.

Additionally, the commission received payments from the federal government for supplemental preclaims assistance but did not always meet the requirements to receive the payment. Specifically, for one of the ten loans we reviewed, the commission received payment from the federal government for the supplemental preclaims assistance even though the lender had submitted the defaulted-loan claim to the commission when the loan was delinquent only 201 days, rather than the required 270 days. As a result, the commission did not ensure that it only received payment for supplemental preclaims assistance on eligible defaulted-loan claims.

Recommendation

The commission should review its procedures to ensure that it makes at least three preclaims assistance collection efforts, including at least one letter. The commission should also review its procedures for requesting payment from the federal government for supplemental preclaims assistance to ensure that the lender did not submit a defaulted-loan claim prior to the loan being delinquent 270 days.

View of Department

The commission agreed with the finding reported above and plans to take action to correct the reported deficiencies. Specifically, the commission plans to change its practice of not making additional collection attempts when it makes successful telephone contact with the borrower or a household representative during its preclaims assistance activities. Instead, the commission plans to follow up successful telephone contacts with either an additional letter or telephone attempt to determine if the borrowers have resolved their delinquent status.

With respect to the one supplemental preclaims assistance payment that the commission received for which it was not eligible, the commission is investigating the circumstances under which this exception occurred. The commission plans to immediately seek a solution, whether through systematic or manual intervention, to correct any supplemental preclaims assistance payments for which it is not eligible to receive.

Reference Number:	96-17-4-84.032
Federal Catalog Number:	84.032
Federal Program Title:	Federal Family Education Loans
Federal Award Number and Period:	FFY 1995-96
Category of Finding:	Special Tests and Provisions
State Administering Department:	California Student Aid Commission (commission)

Criteria

In our review of the Federal Family Education Loans program, we determined that the following were among the compliance requirements related to the federal share of borrower payments:

The Code of Federal Regulations, Title 34, Section 682.404(g)(3), requires the California Student Aid Commission (commission) to report to the federal government the federal share of borrower payments for defaulted student loans. These amounts must be remitted within 45 days of receipt of funds from the borrower.

Condition

The commission receives borrower payments for defaulted student loans directly or through collection agencies. The federal government is entitled to receive a share of these moneys. However, the commission did not report approximately $29 million (29 percent) of the collections due to the federal government for fiscal year 1995-96 within the required 45 days. Although approximately $28.1 million of these collections were no more than one month late, over $58,000 were more than one year late. We have reported this issue in previous years.

Recommendation

The commission should minimize the time lapsed between receipt of collections and reporting of those collections to the federal government on the monthly claims and collections report.

View of Department

The commission concurs with the recommendation and believes that the incidence of late reporting of collections can be reduced by decreasing the turnaround time for completion and submission of the monthly claims and collections report to the federal government by five to seven days. Because collections are reported to the federal government once a month, a decrease in processing time of five to seven days could result in certain collections being reported within the required time.

Reference Number:	96-13-6-93.536
Federal Catalog Number:	93.568
Federal Program Title:	Low-Income Home Energy Assistance Program
Federal Award Number and Period:	6G992201, FFY 1995-96
Category of Finding:	Services Allowed
State Administering Department:	Department of Community Services and Development (department)

Criteria

In our review of the Low-Income Home Energy Assistance Program (LIHEAP), we determined the following were compliance requirements related to providing energy assistance to eligible applicants:

The United States Code, Title 42, Section 8624, in part requires that the State prepare and submit to the U.S. Department of Health and Human Services a plan that describes its strategy for implementing the LIHEAP. The plan must include, but is not limited to, a description of the Department of Community and Services Development's (department) calculation of the benefit levels for each type of assistance it provides to eligible applicants under the program. In addition, the section requires that the State must expend LIHEAP funds in accordance with the State plan. Finally, Section 8624 requires that the State must provide fiscal control and fund-accounting procedures to ensure that federal funds paid to the State are properly disbursed of and accounted for.

The State's plan for the 1996 LIHEAP grant states that its home-energy assistance element of the LIHEAP provides one-time assistance, per household, per program year.

Condition

The department is responsible for developing and implementing a plan to provide home-energy assistance to eligible low-income Californians under the LIHEAP. The federal laws governing the LIHEAP require the department to provide the highest level of assistance to households that have the lowest incomes and the highest energy costs or needs. The department provides energy assistance that is noncrisis in nature through the home-energy assistance program (HEAP) element of its LIHEAP. As part of its plan for implementing the LIHEAP, the department established a policy to make only one HEAP payment to an eligible applicant during each program year. However, for fiscal year 1995-96, we found the department does not have adequate controls over HEAP payments to ensure it makes only one payment to an eligible applicant each program year as required.

The department provides HEAP payments to eligible applicants directly from the department or through local public or nonprofit agencies contracted by the department to provide LIHEAP services. During fiscal year 1995-96, the department typically provided HEAP payments to assist applicants who could not pay their utility bills. During the same period, local agencies typically made HEAP payments directly to applicants who used bulk fuels such as wood, propane, or oil to heat their homes.

However, the department did not have the controls in place to ensure that applicants did not receive both a payment from the department and a payment from a local agency. According to the program manager, the possibility for more than one payment to applicants for HEAP payments resulted from outreach activities conducted by the department. The department mailed applications to potential HEAP payment recipients and directed the applicants to return the applications to the department for processing. However, because the department did not have a record of individuals and households who received payments for bulk fuel from local agencies, it could not be certain it was not providing a second payment to the applicants who responded to the department's mailings. As a result, the department cannot be certain it is following its policy designed to assure it is providing the highest level of assistance to the households with the lowest level of income or highest level of need, as required by the LIHEAP. According to the program manager, for program year 1997 local agencies will process applications for HEAP assistance that result from the department's outreach activities. Local agencies can then determine whether applicants seeking the department's assistance with paying their utility bills have already received a payment for bulk fuel from a local agency.

Recommendation

The department should implement its procedures to ensure it provides only one HEAP payment to an individual or household for each program year.

View of Department

The department agrees with the finding and recommendation. In the future, the department will forward applications for HEAP assistance payments it receives as a result of outreach mailings to local agencies for processing.

Reference Number:	96-13-7-93.568
Federal Catalog Number:	93.568
Federal Program Title:	Low-Income Home Energy Assistance Program
Federal Award Number and Period:	5G992201, FFY 1994-95
Category of Finding:	Services Allowed
State Administering Department:	Department of Community Services and Development (department)

Criteria

In our review of the Low-Income Home Energy Assistance Program (LIHEAP), we determined that the following were among the compliance requirements related to allowable services:

The United States Code, Title 42, Section 8624(b)(9), requires that no more than 10 percent of LIHEAP funds payable to the State may be used for planning and administrative costs.

The Code of Federal Regulations, Title 45, Section 96.30, requires that a grant recipient establish sufficient fiscal control and accounting procedures to permit the tracing of funds to a level of expenditure adequate to demonstrate that program funds have been used in compliance with federal requirements.

Condition

The Department of Community Services and Development (department) is responsible for administering the LIHEAP. Our analysis reveals that the department spent more than federal regulations allow to administer the 1995 LIHEAP grant. The department believes it has not exceeded allowable limits; however, it does not accumulate LIHEAP planning and administrative costs in its accounting or program records in a manner that allows it to identify and summarize those costs for the department and local service providers. Therefore, the department cannot be certain it has complied with the spending limitations of the program.

Federal regulations allow the department to use up to 10 percent of grant funds to pay the department's and the local service providers' costs of planning and administering the LIHEAP. During fiscal year 1995-96, the department spent LIHEAP funds, totaling approximately $6.7 million to pay the planning and administrative costs of the department and local service providers. Using financial data provided by the department's fiscal and program units for the 1995 LIHEAP grant, we determined that the department overspent the amount of grant funds allowed for the planning and administrative costs by approximately $626,000.

According to the department's chief of fiscal operations, the administrative cost we identified for local service providers includes costs that are funded by sources other than the LIHEAP grant. However, the department could not identify those costs in its records. As a result, the department cannot determine whether it has met the spending limitations for its administrative costs of the LIHEAP. When the department overspends LIHEAP funds for administrative costs it reduces the amount of program funds available to assist the home energy needs of the State's low-income population. We reported a similar finding as a result of our fiscal year 1994-95 audit.

Recommendation

The department should establish procedures to identify and summarize LIHEAP expenditures to ensure it uses program funds in compliance with spending limitations for planning and administrative costs.

View of Department

The department agrees with the findings and provides the following comments. According to the department's director, the department agrees that it did not have a system in place to identify LIHEAP administrative costs paid by the department. The fiscal information the department provided to us that showed LIHEAP administrative costs in excess of the allowable 10 percent includes total administrative costs reported by the department's contractors. The total administrative costs of the contractors, however, include some costs that are not related to the LIHEAP grants.

However, the department did not have a system in place to capture the contractors' administrative costs related to the LIHEAP grant. Currently, the department's audit staff is reviewing the 1995 LIHEAP contracts and has found that the amount of LIHEAP funds the department has paid to contractors for administrative costs is at least $200,000 less than the amount shown in the fiscal information provided to the Bureau of State Audits. While conducting this review, the department's audit staff has put in place a system to capture the administrative costs of the department's contractors that are paid from LIHEAP funds. Furthermore, the department's auditors are currently reviewing the department's administrative costs that have been charged to the LIHEAP. While the review is not complete, the department's auditors have also found that there are charges included in the department's fiscal year 1995-96 administrative expenditures that should have been recorded as fiscal year 1996-97 administrative expenditures.

Reference Number:	96-15-2-93.917
Federal Catalog Number:	93.917
Federal Program Title:	HIV Care Formula Grants
Federal Award Number and Period:	BRX/070041-95-0, 4/1/95 to 3/31/96
Category and Finding:	Earmarking
State Administering Department:	Department of Health Services (department)

Criteria

In our review of the HIV Care Formula Grants, we determined that the following was among the compliance requirements pertaining to the level of effort. The United States Code, Title 42, Subchapter XXIV, Section 300ff-22(b), requires that a state use not less than 15 percent of funds allocated under this act to provide health and support services to infants, children, women, and families with the HIV disease.

Condition

The Department of Health Services (department) cannot demonstrate that it is complying with the requirement to use at least 15 percent of funds from the HIV Care Formula Grants (grant) to provide health and support services to infants, children, women, and families with the HIV disease. According to the chief of the department's Care Section of the Office of AIDS, in the first six years of the Comprehensive AIDS Resources Emergency (CARE) Act legislation, the State demonstrated to the satisfaction of the federal government that it met this requirement. However, to demonstrate its compliance, the department has simply provided an assurance in the grant application prior to spending the funds. Because it does not have a monitoring system to identify and track specific costs, the department cannot document that it is complying with the grant's spending requirements.

Recommendation

The department should develop and implement a system to track costs of services provided to infants, children, women, and families with the HIV disease.

View of Department

Beginning in fiscal year 1996-97, the Ryan White CARE Act Amendments of 1996 specify that each state calculate a minimum spending percentage to be used for providing health and support services to infants, children, women, and families with the HIV disease. This minimum percentage is the ratio of the state's population of women, infants, and children with the HIV disease to the state's total population with the HIV disease. The chief of the Care Section indicated that the department is complying with the new requirement by providing to the subrecipient HIV CARE consortia the estimated proportion of women, infants, and children living with AIDS and the minimum amount the consortia must spend on this population. The department is requiring each consortium to document how it plans to meet this requirement and to provide quarterly reports on its progress.

Reference Number:	96-16-5-93.994
Federal Catalog Number:	93.994
Federal Program Title:	Maternal and Child Health Services Block Grant to the States
Federal Award Number and Period:	95B1CAMCHS-04 October 1, 1994 to September 30, 1995
Category of Finding:	Special Reporting Requirements
State Administering Department:	Department of Health Services (department)

Criteria

In our review of the Maternal and Child Health Services Block Grant to the States, we determined that the following was among the compliance requirements pertaining to special reporting requirements. The Code of Federal Regulations, Title 45, Section 96.30(b), requires that a state's fiscal control and accounting procedures must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant.

Condition

The Department of Health Services (department) was unable to provide clear documentation that its accounting records support certain expenditures it recorded in the annual report for the Maternal and Child Health Services Block Grant to the States (grant). For the portion of expenditures that we reviewed, the department reported approximately $28.9 million. However, the accounting records list only $27.7 million in expenditures. Without clear documentation, the department cannot show that it spent funds in accordance with the grant application or that amounts reported to the federal government are accurate.

Recommendation

The department should prepare and retain documentation that clearly links the information in its annual report for the grant with the department's official accounting records.

View of Department

The chief of the department's Maternal and Child Health Branch acknowledged that the department's accounting records were not the source for the expenditure information in the annual report. According to the chief, her staff plans to meet with the department's accounting section to develop a protocol within the automated accounting system that will verify when the department has fully spent the block grant.

Reference Number:	96-17-5-93.568
Federal Catalog Number:	93.568
Federal Program Title:	Low-Income Home Energy Assistance Program
Federal Award Number and Period:	5G992201, FFY 1994-95
Category of Finding:	Special Tests and Provisions
State Administering Department:	Department of Community Services and Development(department)

Criteria

In our review of the Low-Income Home Energy Assistance Program (LIHEAP), we determined the following were compliance requirements related to the prompt expenditure of LIHEAP funds:

The United States Code, Title 42, Section 8626(b), allows that the State may request up to 10 percent of its allotted LIHEAP funds to be carried over for use in a second year. In addition, Section 8626(b) states that any unused LIHEAP funds in excess of 10 percent of an allotted amount are subject to reallotment by the federal government.

The Code of Federal Regulations, Title 45, Section 96.81, requires in part, that the Department of Community Services and Development (department) report the amount of LIHEAP funds it requests to remain available for obligation in the succeeding year.

The Code of Federal Regulations, Title 45, Section 96.30, requires that a grant recipient establish sufficient fiscal control and accounting procedures to permit the tracing of funds to a level of expenditure adequate to demonstrate that program funds have been used in compliance with federal regulations.

Condition

The department is responsible for providing home energy assistance to low-income Californians through the LIHEAP. However, the department does not always follow federal law and regulations concerning the prompt expenditure of LIHEAP funds. We found that the department did not ensure that it spent or obligated at least 90 percent of its 1995 LIHEAP grant within the first year of availability as required by federal law. The department asked the U.S. Department of Health and Human Services (DHHS) to carry over approximately $5.9 million, or 10 percent, of the 1995 LIHEAP grant for use in the second year of the grant period. However, the department could not provide us program or accounting records showing that it had $5.9 million of unspent or unobligated funds.

The department was awarded approximately $58.9 million for its 1995 LIHEAP grant. We reviewed the department's expenditures of the 1995 LIHEAP grant and found it had spent or obligated only approximately $51.3 million, or 87 percent, of the grant amount. As a result, the department carried over approximately $7.7 million, or 13 percent, of the grant for expenditure in the second year of the grant period. Federal regulations require that the department must spend or obligate 90 percent of its LIHEAP award in the first year of the grant period or return the unused award to the federal government for reallotment. According to the chief of fiscal operations, at the end of the first year of the grant period the department had obligations for assistance payments that would bring it into compliance with the 10 percent carry-over requirement of the program. However, he could not identify the amounts in the department's accounting records. The chief of fiscal operations further stated that the department did not have procedures in place to adequately identify LIHEAP obligations to ensure that it has obligated 90 percent of the 1995 LIHEAP grant award within the first year of the grant period. Beginning with the 1996 LIHEAP grant, the department has implemented procedures to identify the amounts it plans to pay to energy utility companies during the second year of the grant period and enter into the necessary agreements with the utility companies to obligate the grant funds. The new

procedures will allow the department to monitor LIHEAP obligations to ensure it complies with the requirements of the program.

Recommendation

To provide the information it needs to ensure compliance with the 10 percent grant carry-over limitations of the LIHEAP, the department should ensure it maintains LIHEAP expenditures and obligations in its accounting records. In addition, the department should ensure that the grant amounts it requests to the federal DHHS for carry-over to a succeeding year are supported by information contained in its program and accounting records.

View of Department

The department agrees with the findings. The department points out that we used reports the department provided from its accounting system (CALSTARS) to identify that the department had carried over 13 percent of fiscal year 1995-96 LIHEAP funds to the following year when a maximum of only 10 percent is allowed. According to the department's director, the department now feels that the CALSTARS reports that were provided to us during the audit are inaccurate because of errors originating several years ago. The department has retained the services of a retiree to review, audit, and correct the CALSTARS system. Once this has been accomplished, the department feels that the CALSTARS system and all departmental records will show that the department did not carry over more than the allowable 10 percent.

Reference Number:	96-17-6-93.959
Federal Catalog Number:	93.959
Federal Program Title:	Block Grant for Prevention and Treatment of Substance Abuse
Federal Award Number and Period:	95B1CASAPT-04; 10/1/94 - 9/30/96
Category of Finding:	Special Tests and Provisions
State Administering Department:	Department of Alcohol and Drug Programs (department)

Criteria

In our review of the Block Grant for Protection and Treatment of Substance Abuse (SAPT), we determined that the following were among the compliance requirements related to independent peer reviews:

The United States Code, Title 42, Section 300x-53(a)(1)(a) and the Code of Federal Regulations, Title 45, Section 96.136(a), require the department to contract for periodic independent peer reviews to assess the quality, appropriateness, and efficacy of treatment services provided by entities receiving funds from the SAPT block grant. In addition, these codes require that not fewer than 5 percent of the entities be reviewed.

Condition

The Department of Alcohol and Drug Programs (department) has not contracted for independent peer reviews of the alcohol and drug treatment providers receiving funds from the SAPT block grant. The Code of Federal Regulations required that the independent peer review begin in fiscal year 1993-94, with at least 5 percent of providers reviewed annually. Although the department solicited and received bids to perform these reviews, as of February 1997, it was unable to find a suitable contractor. Without these reviews, the department cannot ensure the alcohol and drug treatment providers are meeting performance goals or providing services consistent with the objective of the block grant.

The Bureau of State Audits had similar findings in fiscal years 1993-94 and 1994-95.

Recommendation

To ensure that subrecipients comply with the requirements for the SAPT block grant program, the department should immediately take steps to organize independent peer reviews. At least 20 percent of the entities that provide alcohol and drug treatment services should be covered by these reviews, which would bring the department up to date with the requirement that at least 5 percent of the entities be reviewed each fiscal year starting in fiscal year 1993-94.

View of Department

The department agrees with the finding but does not agree with our recommendation that it review at least 20 percent of the entities. According to the department, as of May 1997, it had identified a potential contractor, using an Invitation for Bid process. The department expects to have a contract by June 1997 and plans to review 5 percent of the entities.

Reference Number:	96-11-4-93.778
Federal Catalog Number:	93.778
Federal Program Title:	Medical Assistance Program
Federal Award Number and Period:	05-9605CA5028 FFY 1995-96
Category of Finding:	Administrative Requirements (Program Income)
State Administering Department:	Department of Health Services (department)

Criteria

In our review of the Medical Assistance Program (Medi-Cal), we determined that the following were among the compliance requirements related to the collection and accountability of program income:

The United States Code, Title 42, Section 1396r-8(b)(1)(A), requires a drug manufacturer who has entered into a rebate agreement with the federal government or the State to provide a rebate for all covered outpatient drugs paid for by the federal government and the State.

The United States Code, Title 42, Section 1396r-8(b)(1)(B), requires that the State offset amounts received from drug rebates against expenditures for the Medical Assistance Program.

The State Administrative Manual, Section 8776.6, requires that each department develop collection procedures that will ensure prompt follow-up on amounts owed the department.

The State Administrative Manual, sections 7900 and 7920, recommends that each department be able to reconcile records with the same information from different sources, such as the department's accounting system and program tracking system.

Condition

As of April 1997, the Department of Health Services (department) had not fully implemented procedures to monitor and collect drug rebates. The department also had not finished establishing steps for performing monthly reconciliations between the department's accounting records and its records for the drug rebate program. Without such procedures and steps, the department cannot verify the proper recording of these transactions and the completeness of its financial records. In addition, the absence of established procedures increases the risk that the department may not collect drug rebates that are legally owed to the State and the federal government.

According to the department's director, the department is currently updating the drug rebate tracking system used to record invoice and payment information for each drug manufacturer. The department and its fiscal intermediary contractor are jointly developing methods to streamline the billing and tracking of drug rebates by consolidating these activities under the responsibility of the contractor. This transition should be complete by June 1997. The director expects the new system to improve timeliness of invoicing, accuracy of payment tracking, and availability of management information concerning the collection of drug rebates. The chief of the Medi-Cal Contracting Section stated that the department currently maintains invoice and payment information for manufacturers, but cannot promptly access this information because it has not completely entered this information into the automated tracking system.

Further, the acting chief of the department's Financial Management Branch indicated that his staff has already developed the programming necessary to update the drug rebate tracking system. Once the department has fully updated the tracking system, the Financial Management Branch will be responsible for reconciling the cash receipts recorded in the automated accounting system to the data in the tracking system.

In our 1994-95 audit, we reported a similar weakness in the department's system for tracking drug rebates. The department responded that it would implement new policies and procedures for monitoring and collecting drug rebates by early 1997. According to the department's director, the department will finish implementing its procedures in June 1997.

Recommendation

The department should continue to implement its comprehensive policy for monitoring, reconciling, and collecting drug rebates.

View of Department

The department agrees with the finding and is currently implementing the corrective action described above.